

APPENDIX B-8

STANDARD TERMS AND CONDITIONS FOR

SUBCONTRACTS TO PURCHASE  
COMMERCIAL ITEMS

Effective: October 1, 2003

**APPENDIX B-8  
INDEX**

<b><u>CLAUSE</u></b>	<b><u>TITLE</u></b>	<b><u>PAGE</u></b>
Clause 1.	SECURITY, SAFETY, AND ACCESS REQUIREMENTS FOR SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES (SPECIAL) (MAY 2003) ..... 1 (Applies to all subcontracts where Subcontractor' employees (or lower-tier subcontractors' employees) and their officers, agents, or other persons representing the Subcontractor will enter onto NREL operated facilities, including Government-owned or -leased property.)	1
Clause 2.	LOBBYING RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT) (SPECIAL) (2001) ..... 2 Derived from DOE Acquisition Letter 2000-11 (FD) (Applies to all subcontracts.)	2
Clause 3.	LOBBYING RESTRICTIONS (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT) (SPECIAL) (2001) ..... 3 Derived from DOE Acquisition Letter 2000-11 (Applies to all subcontracts.)	3
Clause 4.	SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL) (MAY 2003) ..... 3 (Applies to all subcontracts.)	3
Clause 5.	SUBCONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS ..... 3 (SPECIAL) (MAY 2003-2/02) Derived from FAR 52.212-4 (Applies to subcontracts for the acquisition of commercial items or services.)	3
Clause 6.	SUBCONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS ..... 9 (SPECIAL) (MAY 2003-6/03) Derived from FAR 52.212-5 (Applies to subcontracts for the acquisition of commercial items.)	9
Clause 7.	NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) ..... 12 Derived from FAR 52.215-19 (FD) (Applies to subcontracts where cost or pricing data is required or subcontracts where pre-award or post-award cost determination will be subject to FAR subpart 31.2- subcontracts with commercial organizations.)	12
Clause 8.	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000) ..... 13 Derived from FAR 52.225-13(FD) (Applies to all subcontracts exceeding \$2,500.)	13

**Clause 1. SECURITY, SAFETY, AND ACCESS REQUIREMENTS FOR SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES (SPECIAL) (MAY 2003)**

*(Applies to all subcontracts where Subcontractor's employees (or lower-tier subcontractors' employees) and their officers, agents, or other persons representing the Subcontractor will enter onto NREL operated facilities, including Government-owned or -leased property.)*

A. Security and safety requirements.

1. NREL has established security and safety requirements to govern access onto NREL operated facilities by the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers, agents, and any other persons representing the Subcontractor.

The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include cameras, copying machines, reproduction devices, recording devices, radio transmitters, firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), alcoholic beverages, and livestock. NREL operated facilities and DOE-owned or -leased property is closed to all hunting.

2. As a condition of entry to NREL operated facilities, the Subcontractor agrees to permit NREL Security personnel to search the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents' vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles to be brought onto NREL operated facilities or to detect or deter the unauthorized removal of Government property from NREL operated facilities.
3. The Subcontractor is solely responsible for the security of the Subcontractor's employees (and its lower tier subcontractors' employees) and their officers and agents' materials and equipment at the NREL operated facilities. Any security system the Subcontractor may elect to use (fences, keys, alarms, etc.) must be coordinated with the NREL Technical Monitor.
4. The Subcontractor is responsible to advise the NREL Technical Monitor promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations involving lost time accidents and ambulance runs, occurring under this subcontract.
5. NREL Security reserves the right to revoke site access authorization for any person violating NREL or DOE safety and security policies and procedures.

B. Access requirements for U.S. citizens.

1. Access to NREL operated facilities is controlled in accordance with the DOE's security requirements. The Subcontractor shall ensure that any of the Subcontractor's employees (and its lower-tier subcontractors' employees) and their officers and agents who will enter onto the NREL operated facilities are specifically authorized site access under the NREL requirements set forth in the NREL Access Control Policy and Program, including identification, badging, and registration by NREL Security. A two-week advance notice to NREL Security processed through the NREL Subcontract Administrator is required prior to access by U.S. Citizens.

C. Access requirements for persons who are not U.S. citizens.

1. The Subcontractor shall ensure that any of the Subcontractor's employees (or its lower-tier subcontractors' employees) and their officers, and agents who will enter onto NREL operated facilities and who are not U.S. citizens meet the requirements set forth in NREL's Foreign National Management Policy and Program, including: (a) appropriate work authorization documentation (i.e. Visa), (b) completion of an NREL Foreign National Data Card, and (c) NREL Manager-level approval.

2. Foreign Nationals from DOE-designated “Sensitive Countries” will be processed for a Federal background check. This process requires a minimum of two weeks. Foreign Nationals from DOE-designated “Terrorist Supporting Countries” will be processed for an extensive Federal background check and DOE Headquarters approval. This process requires a minimum of three months. The Subcontractor should contact the NREL Subcontract Administrator to obtain the most current listing of “Sensitive Countries” and “Terrorist Supporting Countries.”

It is the responsibility of the NREL Technical Monitor and the NREL Subcontract Administrator to assure that the Subcontractor provides all documentation and meets all requirements within the appropriate time frames for NREL Security to process and approve the request for access. Any person(s) denied access by NREL Security or DOE shall not be assigned by the Subcontractor to enter onto or perform subcontract work at NREL operated facilities.

3. Prior to the initiation of subcontract that requires entry onto NREL operated facilities, the Subcontractor shall provide to the NREL Subcontract Administrator advance notice and necessary evidence (including visa types and expiration dates) that legally sufficient work permits have been obtained from the U.S. Immigration and Naturalization Service. Further, the Subcontractor is responsible to ensure that such permits are properly maintained for any of the Subcontractor’s employees (and its lower-tier subcontractors’ employees) and their officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.
4. After the Subcontractor (and its lower-tier subcontractors) has commenced work under the subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator the same advance notice and necessary evidence (including visa types and expiration dates) for all subsequently assigned individuals who are not U.S. citizens who will enter onto NREL operated facilities.

D. Access Requirements for all persons

All persons entering NREL operated facilities must display a valid NREL (or DOE) issued identification badge. The Subcontractor is responsible to coordinate badge requirements for entrance onto NREL operated facilities for all the Subcontractor’s employees (and lower-tier subcontractor's employees) and their officers and agents to ensure the display and return of all issued badges.

The Subcontractor is responsible to coordinate with the NREL Technical Monitor all vehicle parking requirements needed to perform the subcontract work on the NREL operated facilities. Vehicle access by Subcontractors and other visitors to the NREL operated facilities are controlled on a 24-hour, 7-day per week basis.

- E. The Subcontractor shall include this clause, including this Paragraph (E), in all lower-tier subcontracts involving subcontract that requires entry onto NREL operated facilities.

**Clause 2. LOBBYING RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT) (SPECIAL) (2001)**

***Derived from DOE Acquisition Letter 2000-11 (FD)***  
***(Applies to all subcontracts.)***

The Subcontractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislative or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**Clause 3. LOBBYING RESTRICTIONS (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT) (SPECIAL) (2001)**

*Derived from DOE Acquisition Letter 2000-11*

*(Applies to all subcontracts.)*

The Subcontractor or awardee agrees that none of the funds obligated on this award shall be made available for any activity, including publication or distribution of literature, that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulation.

**Clause 4. SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL) (MAY 2003)**

*(Applies to all subcontracts.)*

- A. The Subcontractor shall immediately notify the NREL Subcontract Administrator of any notice the Subcontractor may receive including Notice of Violations (NOV) or Notice of Alleged Violations (NOAV) issued by federal, state, or local regulators associated with the operations of NREL and/or performance of work under the Subcontract.
- B. When deemed appropriate by the NREL Subcontract Administrator, the Subcontractor shall conduct negotiations with regulators regarding NOV/NOAVs, fines and penalties, including, if the NREL Subcontract Administrator so requires, accepting NOV/NOAVs in its own name. The Subcontractor shall make no commitments or offers to regulators binding NREL/Government unless approved in advance and in writing by the NREL Subcontract Administrator. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Subcontractor being liable for any excess costs to NREL/Government associated with or resulting from such offers/commitments.
- C. The Subcontractor shall support and provide assistance to the Government concerning any matter arising under a NOV/NOAV.

**Clause 5. SUBCONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS**

*(SPECIAL) (MAY 2003-2/02)*

*Derived from FAR 52.212-4*

*(Applies to subcontracts for the acquisition of commercial items or services.)*

- A. Inspection/Acceptance. The Subcontractor shall only tender for acceptance those items that conform to the requirements of this subcontract. NREL reserves the right to inspect or test any supplies or services that have been tendered for acceptance. NREL may require repair or replacement of nonconforming supplies or re-performance of nonconforming services at no increase in contract price. NREL must exercise its post-acceptance rights –
  - 1. Within a reasonable time after the defect was discovered or should have been discovered; and
  - 2. Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- B. Assignment. The Subcontractor or its assignee may assign its rights to receive payment due as a result of performance of this subcontract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (*e.g.*, use of the Government wide commercial purchase card), the Subcontractor may not assign its rights to receive payment under this subcontract.

- C. Changes. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.
- D. Disputes. (Special)
1. It is NREL's policy to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for a negotiated settlement in order to avoid disputes. When all possibilities for negotiation have failed, the parties will endeavor to move the potential dispute to Alternative Dispute Resolution (ADR). Either party is required to provide a written explanation to the other party for rejecting a request for ADR proceedings, citing the specific reasons that ADR procedures are inappropriate for resolution of the dispute. If the parties are unable to satisfactorily resolve the dispute using ADR or cannot agree on its application, they resume the formal process authorized in this clause.
  2. The parties agree that the appropriate forum for resolution of any dispute or claim pertaining to this subcontract shall be a court of competent jurisdiction as follows:
    - (i) Subject to paragraph (2)(ii) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.
    - (ii) Provided, however, that in the event that the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
  3. Any substantive issue of law in such dispute, claim, or litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations and the Department of Energy Acquisition Regulations that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant to the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
  4. There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any dispute, claim, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier subcontractors or suppliers.
  5. The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a claim of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a claim at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
  6. Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.
- E. Definitions. (Special)
1. "Head of the Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy.
  2. "Commercial component" means any component that is a commercial item.
  3. "Commercial item" means—

- (i) Any item, other than real property, that is of a type customarily used for non-governmental purposes and that—
    - (a) Has been sold, leased, or licensed to the general public; or
    - (b) Has been offered for sale, lease, or license to the general public;
  - (ii) Any item that evolved from an item described in paragraph (3)(i) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under an NREL/Government solicitation;
  - (iii) Any item that would satisfy a criterion expressed in paragraphs (3)(i) or (3)(ii) of this clause, but for—
    - (a) Modifications of a type customarily available in the commercial marketplace; or
    - (b) Minor modifications of a type not customarily available in the commercial marketplace made to meet NREL or Federal Government requirements. “Minor” modifications means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
  - (iv) Any combination of items meeting the requirements of paragraphs (3) (i), (ii), (iii), or (v) of this clause that are of a type customarily combined and sold in combination to the general public;
  - (v) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (3) (i), (ii), (iii), or (iv) of this clause, and if the source of such services—
    - (a) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
    - (b) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
  - (vi) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
  - (vii) Any item, combination of items, or service referred to in subparagraphs (3)(i) through (3)(vi), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
  - (viii) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
4. “Component” means any item supplied to the Federal Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225.11(a).

5. “DOE Contracting Officer” means a person with the authority to enter into, administer, and/or terminate DOE prime contracts and make related determinations and findings. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
  6. “NREL Subcontract Administrator” means a person with the authority to enter into, administer, and/or terminate subcontracts under a DOE prime contract and make related determinations and findings. The term includes certain authorized representatives of the NREL Subcontract Administrator acting within the limits of their authority as delegated by the NREL Contracts and Business Services Director.
  7. “Non-developmental item” means—
    - (i) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
    - (ii) Any item described in paragraph (7)(i) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of NREL or a procuring department or agency; or
    - (iii) Any item of supply being produced that does not meet the requirements of paragraph (7)(i) or (7)(ii) solely because the item is not yet in use.
  8. Except as otherwise provided in this subcontract, the terms “subcontracts” and “lower-tier subcontracts” includes, but is not limited to, purchase orders and changes and modifications to purchase orders.
  9. The term “DOE” means the Department of Energy.
  10. “Contractor” or “DOE Prime Contractor” means Midwest Research Institute. The term “NREL” means the National Renewable Energy Laboratory Division of the Midwest Research Institute, a not-for-profit Missouri Corporation, and includes its successors and assigns of the NREL Division of Midwest Research Institute. The NREL facility is a Department of Energy-owned national laboratory, operated and managed under Contract No. DE-AC36-99-GO10337 by the NREL Division of the Midwest Research Institute.
  11. The term “DOE Directive” means DOE Orders and Notices, modifications thereto, and other forms of directives, including for purposes of this subcontract those portions of DOE’s Accounting and Procedures Handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the DOE Contracting Officer or the NREL Subcontract Administrator for the purpose of addressing short-term or urgent DOE or NREL concerns relating to health, safety, or the environment
- F. Excusable delays. The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the NREL Subcontract Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the NREL Subcontract Administrator of the cessation of such occurrence.



G. Invoice.

- (1) The Subcontractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the subcontract to receive invoices. An invoice must include –
    - i. Name and address of the Subcontractor;
    - ii. Invoice date and number;
    - iii. Subcontract number, subcontract line item number and, if applicable, the order number;
    - iv. Description, quantity, unit of measure, unit price and extended price of the items delivered;
    - v. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
    - vi. Terms of any discount for prompt payment offered;
    - vii. Name and address of official to whom payment is to be sent;
    - viii. Name, title, and phone number of person to notify in event of defective invoice; and
    - ix. Taxpayer Identification Number (TIN). The Subcontractor shall include its TIN on the invoice only if required elsewhere in this subcontract.
    - x. Electronic funds transfer (EFT) banking information.
      - (a) The Subcontractor shall include EFT banking information on the invoice only if required elsewhere in this subcontract.
      - (b) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Subcontractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, subcontract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable NREL procedures.
      - (c) EFT banking information is not required if the NREL waived the requirement to pay by EFT.
  2. Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.
- H. Patent indemnity. The Subcontractor shall indemnify NREL and the Government and their officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this subcontract, provided the Subcontractor is reasonably notified of such claims and proceedings.
- I. Payment. Payment shall be made for items accepted by NREL that have been delivered to the delivery destinations set forth in this subcontract. NREL will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB prompt payment regulations at 5 CFR part 1315. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

- J. Risk of loss. Unless the subcontract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Subcontractor until, and shall pass to the Government upon:
1. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  2. Delivery of the supplies to NREL at the destination specified in the subcontract, if transportation is f.o.b. destination.
- K. Taxes. The subcontract price includes all applicable Federal, State, and local taxes and duties.
- L. Termination for NREL/ Government's convenience. NREL/Government reserves the right to terminate this subcontract, or any part hereof, for its sole convenience. In the event of such termination, the Subcontractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and lower-tier subcontractors to cease work. Subject to the terms of this subcontract, the Subcontractor shall be paid a percentage of the subcontract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Subcontractor can demonstrate to the satisfaction of NREL using its standard record keeping system, have resulted from the termination. The Subcontractor shall not be required to comply with the cost accounting standards or subcontract cost principles for this purpose. This paragraph does not give the NREL or the Government any right to audit the Subcontractor's records. The Subcontractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.
- M. Termination for cause. NREL/Government may terminate this subcontract, or any part hereof, for cause in the event of any default by the Subcontractor, or if the Subcontractor fails to comply with any subcontract terms and conditions, or fails to provide NREL/Government, upon request, with adequate assurances of future performance. In the event of termination for cause, NREL/Government shall not be liable to the Subcontractor for any amount for supplies or services not accepted, and the Subcontractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that NREL/Government improperly terminated this subcontract for default, such termination shall be deemed a termination for convenience.
- N. Title. Unless specified elsewhere in this subcontract, title to items furnished under this subcontract shall pass to the Government upon acceptance, regardless of when or where NREL or the Government takes physical possession.
- O. Warranty. The Subcontractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this subcontract.
- P. Limitation of liability. Except as otherwise provided by an express warranty, the Subcontractor will not be liable to NREL/Government for consequential damages resulting from any defect or deficiencies in accepted items.
- Q. Other compliances. The Subcontractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this subcontract.
- R. Compliance with laws unique to Government subcontracts. The Subcontractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.
- S. Order of precedence. Any inconsistencies in this solicitation or subcontract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Subcontracts paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or subcontract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) Reserved.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

**Clause 6. SUBCONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS**

***(SPECIAL) (MAY 2003-6/03)***

***Derived from FAR 52.212-5***

***(Applies to subcontracts for the acquisition of commercial items.)***

- A. The Subcontractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this subcontract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: None.
- B. The Subcontractor shall comply with the FAR clauses in this paragraph (B) that are indicated by an "X" below and those clauses that the NREL Subcontract Administrator has additionally indicated as being incorporated in this contract by reference to implement provisions of law or Executive Orders applicable to acquisitions of commercial items:

*[NREL Subcontract Administrator shall check ADDITIONAL items as appropriate.]*

- |     |     |          |  |
|-----|-----|----------|--|
| X   | (1) | 52.203-6 | Restrictions on [Sub]contractor Sales to the Government (Jul 1995), with Alternate I (Oct 1995)(41 U.S.C. 253g and 10 U.S.C. 2402).  |
| ___ | (2) | 52.219-3 | Notice of Total HUBZone Set-Aside (Jan 1999)(15 U.S.C. 657a).  |
| ___ | (3) | 52.219-4 | Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a). |
| ___ | (4) | 52.219-5 | (i) Very Small Business Set-Aside (June 2003)(Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).  |
| ___ |     |          | (ii) Alternate I (Mar 1999) of 52.219-5.   |
| ___ |     |          | (iii) Alternate II (June 2003) of 52.219-5.  |
| ___ | (5) | 52.219-6 | (i) Notice of Total Small Business Aside (June 2003) (15 U.S.C. 644).  |
| ___ |     |          | (ii) Alternate I (Oct 1995) of 52.219-6.   |
| ___ | (6) | 52.219-7 | (i) Notice of Partial Small Business Set-Aside (June 2003)(15 U.S.C. 644).   |
| ___ |     |          | (ii) Alternate I (Oct 1995) of 52.219-7.   |
| X   | (7) | 52.219-8 | Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)).   |

- \_\_\_ (8) 52.219-9 (i) Small Business [Lower-tier] Subcontracting Plan (Jan 2002)(15 U.S.C. 637 (d)(4)).
- \_\_\_ (ii) Alternate I (Oct 2001) of 52.219-9.
- \_\_\_ (iii) Alternate II (Oct 2001) of 52.219-9.
- \_\_\_ (9) 52.219-14 Limitations on [Lower-tier] Subcontracting (Dec 1996)(15 U.S.C. 637(a)(14)).
- \_\_\_ (10) 52.219-23 (i) Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (June 2003)(Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- \_\_\_ (ii) Alternate I (June 2003) of 52.219-23.
- \_\_\_ (11) 52.219-25 Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting (Oct 1999)(Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- \_\_\_ (12) 52.219-26 Small Disadvantaged Business Participation Program-Incentive Subcontracting (Oct 2000)(Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- X (13) 52.222-3 Convict Labor (June 2003)(E.O. 11755).
- X (14) 52.222-19 Child Labor-Cooperation with Authorities and Remedies (Sep 2002)(E.O. 13126).
- X (15) 52.222-21 Prohibition of Segregated Facilities (Feb 1999).
- X (16) 52.222-26 Equal Opportunity (Apr 2002)(E.O. 11246).
- X (17) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)(38 U.S.C. 4212).
- X 18) 52.222-36 Affirmative Action for Workers with Disabilities (Jun 1998)(29 U.S.C. 793).
- X (19) 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)(38 U.S.C. 4212).
- \_\_\_ (20) 52.223-9 (i) Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Aug 2000)(42 U.S.C. 6962(c)(3)(A)(ii)).
- \_\_\_ (ii) Alternate I (Aug 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
- X (21) 52.225-1 Buy American Act--Supplies (June 2003)(41 U.S.C. 10a-10d).
- \_\_\_ (22) 52.225-3 (i) Buy American Act - North American Free Trade Agreement - Israeli Trade Act (June 2003)(41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).
- \_\_\_ (ii) Alternate I (May 2002) of 52.225-3.
- \_\_\_ (iii) Alternate II (May 2002) of 52.225-3.
- \_\_\_ (23) 52.225-5 Trade Agreements (June 2003)(19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- X (24) 52.225-13 Restriction on Certain Foreign Purchases (June 2003)(E.O. 12722, 12724, 13059, 13067, 13121, and 13129).
- X (25) 52.225-15 Sanctioned European Union Country End Products (Feb 2000)(E.O. 12849).
- X (26) 52.225-16 Sanctioned European Union Country Services (Feb 2000)(E.O. 12849).

- \_\_\_ (27) 52.232-29 Terms for Financing of Purchases of Commercial Items (Feb 2002)(41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- \_\_\_ (28) 52.232-30 Installment Payments for Commercial Items (Oct 1995)(41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
- \_\_\_ (29) 52.232-33 Payment by Electronic Funds Transfer-Central Contractor Registration (May 1999)(31 U.S.C. 3332).
- \_\_\_ (30) 52.232-34 Payment by Electronic Funds Transfer-Other Than Central Contractor Registration (May 1999)(31 U.S.C. 3332).
- \_\_\_ (31) 52.232-36 Payment by Third Party (May 1999)(31 U.S.C. 3332).
- X (32) 52.239-1 Privacy or Security Safeguards (Aug 1996)(5 U.S.C. 552a).
- \_\_\_ (33) 52.247-64 (i) Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003)(46 U.S.C. 1241 and 10 U.S.C. 2631).
- \_\_\_ (ii) Alternate I (Apr 1984) of 52.247-64.

C. The Subcontractor shall comply with the FAR clauses in this paragraph (C) applicable to commercial services, that are indicated by an "X" below and those clauses that the NREL Subcontract Administrator has additionally indicated as being incorporated in this subcontract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items:

*[NREL Subcontract Administrator check ADDITIONAL as appropriate.]*

- X (1) 52.222-41 Service Contract Act of 1965, as Amended (May 1989)(41 U.S.C. 351, *et seq.*).
- \_\_\_ (2) 52.222-42 Statement of Equivalent Rates for Federal Hires (May 1989)(29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- \_\_\_ (3) 52.222-43 Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts) (May 1989)(29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- \_\_\_ (4) 52.222-44 Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Feb 2002)(29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
- \_\_\_ (5) 52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor [Sub]contract Pursuant to Predecessor [Sub]contractor Collective Bargaining Agreements (CBA) (May 1989)(41 U.S.C. 351, *et seq.*).

D. *Comptroller General Examination of Record.* The Subcontractor shall comply with the provisions of this paragraph D if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records -- Negotiation.

1. The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract.
2. The Subcontractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this subcontract or for any shorter period specified in FAR Subpart 4.7, [Sub]contractor Records Retention, of the other clauses of this subcontract. If this subcontract is

completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.

3. As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Subcontractor to create or maintain any record that the Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- E. 1. Notwithstanding the requirements of the clauses in paragraphs (A), (B), (C), and (D) of this clause, the Subcontractor is not required to flow down any FAR clause, other than those in subparagraphs (i) through (vi) of this paragraph in a lower-tier subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—
- (i) 52.219-8 Utilization of Small Business Concerns (Oct 2000)(15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
  - (ii) 52.222-26 Equal Opportunity (Apr 2002)(E.O. 11246).
  - (iii) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001)(38 U.S.C. 4212).
  - (iv) 52.222-36 Affirmative Action for Workers with Disabilities (June 1998)(29 U.S.C. 793).
  - (v) 52.222-41 Service Contract Act of 1965, as Amended (May 1989), flow down required for all lower-tier subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*)
  - (vi) 52.247-64 Preference for Privately-Owned U.S. Flag Commercial Vessels (Apr 2003)(46 U.S.C. Appx. 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64,
2. While not required, the Subcontractor may include in its lower-tier subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

#### **Clause 7. NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)**

***Derived from FAR 52.215-19 (FD)***

***(Applies to subcontracts where cost or pricing data is required or subcontracts where pre-award or post-award cost determination will be subject to FAR subpart 31.2-subcontracts with commercial organizations.)***

- A. The Subcontractor shall make the following notifications in writing:
1. When the Subcontractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Subcontractor shall notify the NREL Subcontract Administrator within 30 days.

2. The Subcontractor shall also notify the NREL Subcontract Administrator within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- B. The Subcontractor shall--
1. Maintain current, accurate, and complete inventory records of assets and their costs;
  2. Provide the NREL Subcontract Administrator or designated representative ready access to the records upon request;
  3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and
  4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.
- C. The Subcontractor shall include the substance of this clause in all lower tier subcontracts under this Subcontract that meet the applicability requirement of FAR 15.408(k).

**Clause 8. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JULY 2000)**

***Derived from FAR 52.225-13(FD)***

***(Applies to all subcontracts exceeding \$2,500.)***

The Subcontractor shall not acquire, for use in the performance of this subcontract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

- B. The Subcontractor shall not acquire for use in the performance of this subcontract any supplies or services from entities controlled by the government of Iraq.
- C. The Subcontractor shall insert this clause, including this paragraph (C), in all lower-tier subcontracts.